IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE P.N.RAVINDRAN

FRIDAY, THE 14TH DECEMBER 2007 / 23RD AGRAHAYANA 1929

ST.Rev..No. 330 of 2007

AGAINST ORDER DATED 28.5.2007 IN TA NO.126/06 OF THE KERALA SALES TAX APPELLATE TRIBUNAL ADDITIONAL BENCH, PALAKKAD
.....

REVISION PETITIONER/ASSESSEE/APPELLANT

OMEGA POLYMER TREADS,
CHUVANNAMANNU,
TRICHUR DISTRICT,
REP. BY T.V.MARY,
MANAGING PARTNER.

BY ADV. SRI.E.P.GOVINDAN

RESPONDENT/REVENUE/RESPONDENT

STATE OF KERALA,
REPRESENTED BY SECRETARY,
TAXES DEPARTMENT,
GOVERNMENT SECRETARIAT,
TRIVANDRUM.

BY SR.GOVERNMENT PLEADER MR.MOHAMMED RAFIQ

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION ON 14/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.DATTU, C.J. & P.N.RAVINDRAN, J.

S.T.Rev.No.330 of 2007

Dated, this the 14th day of December, 2007

ORDER

H.L.Dattu, C.J.

This Sales Tax Revision is filed by a dealer registered under the Act being aggrieved by the orders passed by the Sales Tax Appellate Tribunal in T.A.No.126 of 2006 dated 28th May, 2007.

2. In this revision the assessee has raised the following questions of law for our consideration and decision. They are as under:

> "1. Whether on the facts and in the circumstances of the case the Tribunal was justified in disallowing the claim of concessional rate to the petitioner.
>
> 2. Whether on the facts and in the circumstances of the case the Tribunal was justified in holding that no originals C forms were produced by the petitioner."

3. Petitioner is a dealer registered both under the provisions of the Kerala General Sales Tax Act, 1963 ('the KGST Act' for short) and the Central Sales Tax Act,, 1956 ('the CST Act' for short).

4. In this tax revision we are concerned with the assessment year 2002- 03 (CST assessment).

5. In the annual returns filed, the assessee had declared the interstate sales to the tune of Rs.34,14,768.00 and further had claimed levy of tax at 4%.

6. The assessee had not produced the C Forms in support of the claim made for levy of the reduced rate of tax. Since the C Forms were not produced by the assessee, the assessing authority had completed the assessment by its

order dated 16.6.2004 levying tax at the rate of 12% on the entire interstate sales of the assessee.

7. The orders so passed by the assessing authority was the subject matter of appeal before the first appellate authority. The appellate authority by its orders dated 8.8.2005 has allowed the appeal and had remanded the matter to the assessing authority to redo the matter in accordance with law and in the light of the observations made in the course of the order.

8. After such remand, the assessing authority once again had passed an order dated 6.2.2006. In that the assessing authority has specifically observed as under:

> "On the basis of directions contained in the appellate order the entire assessment records of the assessee were verified. But the 'C' Form declaration was not available in the assessment records. All my efforts to find out the so called 'C' Form declaration said to have failed at the time of assessment ended in futile. Further, the officer who checked the accounts for the year 2002-03 have specifically stated in the Checknote that "Interstate sales Rs.3414768- no C Forms". In this circumstances I have no other go but to complete the modified assessment under CST for the year 2002-03 by restoring the original order."

9. The assessee thereafter had called in question the modified assessment order dated 6.2.2006 before the first appellate authority. He was unsuccessful there. Therefore, he had filed T.A.No.126 of 2006 before the Sales Tax Appellate Tribunal, Additional Bench, Palakkad.

10. Before the Tribunal, it was the specific case of the assessee that though he had produced the C Forms claiming reduced rate of tax on the

interstate sales effected by him, the assessing authority has not gone into the claim so made and therefore, the order of assessment requires to be annulled/modified. The Tribunal after verifying the assessment records has come to the conclusion that at no point of time the assessee had produced the C Forms before the assessing authority and therefore, he is not entitled to claim reduced rate of tax at 4% on the CST turnover. Aggrieved by the said finding and conclusion reached by the Tribunal, the assessee is before us in this sales tax revision.

11. Section 41 of the KGST Act provides for revision. This Court can entertain a revision petition if for any reason the Tribunal has failed to decide a question of law or decided a question of law erroneously. Under no other circumstances this Court can entertain a revision petition.

12. In the instant case, it is the claim of the assessee that at the time of assessment before the assessing authority for the assessment year 2002-03, the assessee had produced the C Forms and in spite of which the assessing authority had not allowed the reduced rate of tax on interstate sales effected by him.

13. The Tribunal is the last fact finding authority which has looked into the assessment records for the assessment year 2002-03. Having gone through the assessment records it has come to a positive conclusion that at no point of time the assessee had produced the C Forms before the assessing authority to sustain his claim for payment of reduced rate of tax at 4%. The finding of the Tribunal is purely a question of fact and that question of fact cannot be interfered by this Court in a revision petition filed. Even otherwise also, in our opinion, in order to claim reduced rate of tax on the interstate sales,

the assessee is expected to produce the original C Forms issued by the purchasing dealer. In the instant case, such C Forms were never produced by the assessee either before the assessing authority, or before the first appellate authority or before the Tribunal. In the absence of the production of C Forms by the assessee before the assessing authority, in our opinion, the assessing authority was justified in rejecting the claim of the petitioner/assessee for levying reduced rate of tax.

14. We do not see any error in the orders passed either by the assessing authority or by the Tribunal. Therefore, interference with the said order is not called for. Accordingly the sales tax revision requires to be rejected and it is rejected. The questions of law framed by the assessee require to be answered against the assessee and in favour of the Revenue.

Ordered accordingly.

(**H.L.DATTU)**
CHIEF JUSTICE

(P.N.RAVINDRAN)
JUDGE

vns